

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

JEREMY R. ZUDELL,	)	CASE NO. 1:21-CV-01520-DCN
	)	
Plaintiff,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	
	)	
COMMISSIONER OF SOCIAL SECURITY,	)	
	)	<u>ORDER ADOPTING REPORT</u>
Defendant.	)	<u>AND RECOMMENDATION</u>
	)	
	)	

This matter comes before the Court upon the Report and Recommendation of Magistrate Judge Carmen E. Henderson. (ECF #16). On August 5, 2021, Plaintiff Jeremy R. Zudell (“Mr. Zudell”) filed his Complaint (ECF #1) challenging the final decision of the Commissioner of Social Security (“Commissioner”), denying his applications for Supplemental Security Income (“SSI”) and Disability Insurance Benefits (“DIB”) under Title II of the Social Security Act, 42 U.S.C. §§ 405(g), 1383. Pursuant to Local Rule 72.2(b), the case was referred to Magistrate Judge Henderson.

Mr. Zudell filed applications for SSI and DIB on June 1, 2020, alleging that his disability started on July 27, 2018. (ECF # 11, PageID 834). These applications were initially denied, and Mr. Zudell requested a hearing before an Administrative Law Judge (“ALJ”). (ECF # 11, PageID 834). This hearing commenced on March 15, 2021. (ECF # 11, PageID 834). During the hearing, Mr. Zudell, represented by counsel, and an impartial vocational expert testified. (ECF #9, PageID 67). Also in evidence was a medical source statement completed by Lisa Basilli, CNS, detailing Mr. Zudell’s diagnosis and the side effects of his medication. (ECF #9, PageID 636).

The ALJ issued a written decision on March 31, 2021, finding that Mr. Zudell was not disabled. (ECF # 9, PageID 54–56). The Appeals Council declined further review, and the ALJ’s decision became final on June 9, 2021. Mr. Zudell filed a Complaint challenging the Commissioner’s final decision on August 5, 2021. (ECF #1).

Mr. Zudell’s complaint alleges two assignments of error: (1) the ALJ failed to account for the side effects of medications in his evaluations of residual functional capacity; and (2) the ALJ’s reasons for not finding the opinion of treating nurse specialist, Lisa Basilli, persuasive is in error. (ECF #16, PageID 889). Magistrate Judge Henderson issued a Report and Recommendation on August 3, 2022, addressing the second assignment of error. Because Magistrate Judge Henderson found that the second assignment of error requires remand, the Report and Recommendation did not address the first assignment of error. (ECF # 16, PageID 901). She recommended that the Commissioner’s nondisability finding be REVERSED and that the case should be REMANDED to the Commissioner and the ALJ under Sentence Four of § 405(g). (ECF # 16, PageID 901).

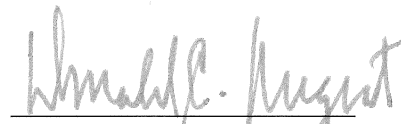
Objections to the Report and Recommendation were to be filed within 14 days of service. FED. R. CIV. P. 72(a). No objections were filed. Federal Rule of Civil Procedure 72(b) addresses the standard of review when objections have been made to a magistrate judge’s report but does not indicate the appropriate standard of review when no objections have been made. The Advisory Committee on Civil Rules has stated that “[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Gray v. Kelly*, No. 1:10CV1103, 2011 U.S. Dist. LEXIS 42157, at \*9-10 (N.D. Ohio Apr. 19, 2011) (quoting FED. R. CIV. P. 72 Advisory Committee’s notes). The U.S. Supreme Court stated in *Thomas v. Arn*, 474 U.S. 140, 150 (1985): “It does not appear that

Congress intended to require district court review of a magistrate judge's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings."

### **Conclusion**

The Court has carefully reviewed the Report and Recommendation and agrees with the findings set forth therein. Magistrate Judge Henderson correctly determined that the ALJ's "failure to build a logical bridge for the Court to understand why he found Nurse Basilli's opinion not persuasive was harmful error." (ECF # 16, PageID 901). Accordingly, the Report and Recommendation of Magistrate Judge Carmen E. Henderson (ECF #16) is ADOPTED. The Commissioner's nondisability finding is REVERSED, and this case is REMANDED to the Commissioner and the ALJ under Sentence Four of § 405(g).

IT IS SO ORDERED.

  
DONALD C. NUGENT  
Senior United States District Judge

DATED: September 20, 2022